PUBLIC

DECISION No 02/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 24 January 2020

on the Implementation framework for the European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators[1], and, in particular, Article 6(10)(b) thereof,

Having regard to Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing[2], and, in particular, Article 5(7) thereof,

Having regard to the outcome of the consultation with the concerned national regulatory authorities and transmission system operators,

Having regard to the favourable opinion of the Board of Regulators of 23 January 2020, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

(1) Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (the 'EB Regulation') laid down a range of requirements for electricity balancing, platforms for the exchange of balancing energy, as well as pricing and settlement of balancing energy. These requirements

[1] OJ L158, 14.6.2019, p. 22.
[2] OJ L312, 23.11.2017, p. 6.

include the development of an implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation ('aFRRIF').

(2) Pursuant to Articles 4(1) and 5(2)(a) of the EB Regulation, all transmission system operators ('TSOs') are required to develop a common proposal for the aFRRIF in accordance with Article 21 of the EB Regulation and submit it to all regulatory authorities for approval. In turn, according to Article 5(6) of the EB Regulation, all regulatory authorities shall reach an agreement and take a decision on the proposal for the aFRRIF within six months after the receipt of the proposal by the last regulatory authority. When all regulatory authorities fail to reach an agreement within the six-month period after the submission or upon their joint request, the Agency, pursuant to Article 5(7) of the EB Regulation, shall adopt a decision concerning the TSOs' proposal in accordance with Article 6(10)(b) of Regulation (EU) 2019/942.

(3) The present Decision of the Agency follows from the request of all the regulatory authorities that the Agency adopts a decision on the proposal for the aFRRIF, which all TSOs submitted to all regulatory authorities for approval and on which all those regulatory authorities could not agree on. Annex I to this Decision sets out the aFRRIF pursuant to Article 21(1) of the EB Regulation as decided by the Agency.

2. PROCEDURE

2.1. Proceedings before regulatory authorities

(4) Article 21(1) of the EB Regulation requires all TSOs to submit a proposal for the aFRRIF no later than twelve months after the entry into force of the EB Regulation. As the EB Regulation entered into force on 18 December 2017, all TSOs were required to submit a proposal for the aFRRIF by 18 December 2018.

(5) On 26 April 2018, all TSOs published for public consultation the draft 'All TSOs' proposal for the exchange of balancing energy from frequency restoration reserves with automatic activation in accordance with Article 21 of Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing'[3]. The consultation lasted from 26 April 2018 until 26 June 2018.

(6) On 18 December 2018, all TSOs submitted to all regulatory authorities an 'All TSOs' proposal for the implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation in accordance with Article 21 of Commission Regulation (EU) 2017/2195 establishing

[3] https://consultations.entsoe.eu/markets/afrr_implementation_framework/ https://consultations.entsoe.eu/markets/afrr_implementation_framework/supporting_documents/20180426_aFRRIF_Implementation_framework.pdf

a guideline on electricity balancing'[4] (hereafter referred to as the 'Proposal'). The last regulatory authority received the Proposal on 11 February 2019.

2.2. Proceedings before the Agency

(7) In a letter[5] dated 24 July 2019 and received by the Agency on the same day, the Chair of the Energy Regulators Forum[6], on behalf of all regulatory authorities informed the Agency that they jointly agreed to request the Agency to adopt a decision on the Proposal pursuant to Article 5(7) of the EB Regulation.

(8) The letter was accompanied by a document titled 'NON-PAPER OF ALL REGULATORY AUTHORITIES AGREED AT THE ENERGY REGULATORS' FORUM ON All TSOs' proposal for the implementation framework for the exchange of balancing energy from frequency restoration reserves with automatic activation in accordance with Article 21 of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing'[7] explaining the diverging views among all regulatory authorities. According to these documents, there are two main points of disagreement among all regulatory authorities: (a) the technical functioning of the automatic frequency restoration process as currently performed by various TSOs, and (b) the choice of "control demand" model as the high-level design for the European Platform for the exchange of balancing energy from frequency restoration reserves with automatic activation (hereafter referred to as the aFRR-Platform).

(9) On 28 October 2019, the Agency launched a public consultation on the Proposal, inviting all market participants to submit their comments by 18 November 2019. The summary and evaluation of the responses received are presented in Annex II to this Decision.

(10) Moreover, the Agency closely cooperated with all regulatory authorities and TSOs and further consulted on the amendments to the Proposal during teleconferences, meetings and through exchanges of draft amendments to the Proposals suggested by the Agency. In particular, the following procedural steps were taken and, in general, before each interaction, the Agency shared with the regulatory authorities and TSOs a new version of amendments proposed by the Agency to the Proposal:

- 24 and 25 July 2019: teleconference with all regulatory authorities;

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[4] https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/06%20aFRR%20IF/Action%201%20-%20aFRR%20IF%20proposal.pdf

[5] https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/06%20aFRR%20IF/Action%202%20-%20aFRR%20IF%20referral%20to%20ACER%20letter.pdf

[6] The all regulatory authorities' platform to consult and cooperate for reaching a unanimous agreement on NEMO's and TSO's proposals.

[7] https://www.ceer.eu/documents/104400/-/-/8821e98e-8de0-8565-5b51-c36d51b19cc9

- 27 and 28 August 2019: discussion with all regulatory authorities in the framework of the Agency's Electricity Balancing Taskforce ('EB TF');
- 2 September 2019: teleconference with all regulatory authorities;
- 10 and 11 September 2019: teleconference with all regulatory authorities and TSOs;
- 18 and 19 September 2019: discussion with all regulatory authorities in the framework of the EB TF;
- 27 September 2019: teleconference with all regulatory authorities and TSOs;
- 4 October 2019: teleconference with all regulatory authorities;
- 9 and 10 October 2019: teleconference with all regulatory authorities and TSOs;
- 23 October 2019: technical workshop with all regulatory authorities and TSOs,
- 24 October 2019: discussion with all regulatory authorities in the framework of the EB TF;
- 12 November 2019: discussion with all regulatory authorities in the framework of the EB TF;
- 13 November 2019: public workshop with all stakeholders including regulatory authorities and TSOs;
- 15 November 2019: teleconference with all regulatory authorities and TSOs;
- 19 November 2019: discussion with all regulatory authorities in the framework of the Agency's Electricity Working Group ('AEWG');
- 22 November 2019: teleconference with all regulatory authorities and TSOs;
- 27 November 2019: teleconference with all regulatory authorities and TSOs;
- 29 November 2019: teleconference with all regulatory authorities and TSOs;
- 4 and 5 December 2019: discussion with all regulatory authorities in the framework of the EB TF;
- 6 December 2019: teleconference with all regulatory authorities and TSOs;
- 11 December 2019: discussion with all regulatory authorities at the Board of Regulators' meeting;
- 12 December 2019: teleconference with all regulatory authorities and TSOs.

3. THE AGENCY'S COMPETENCE TO DECIDE ON THE PROPOSAL

(11) Pursuant to Article 5(7) of the EB Regulation, where the regulatory authorities have not been able to reach an agreement or upon their joint request, the Agency shall adopt a decision concerning the submitted terms and conditions or methodologies within six months in accordance with Article 6(12)(a) of Regulation (EU) 2019/942.

(12) According to the letter of the Chair of the all Energy Regulators Forum dated 24 July 2019, all regulatory authorities agreed jointly to request the Agency to adopt a decision on the Proposal pursuant to Article 5(7) of the EB Regulation. At the time of this request, all regulatory authorities were competent to jointly refer the Proposal to the Agency, since it was made before the expiry of the six-month deadline after receiving the Proposal (i.e. 11 August 2019).

(13) Therefore, in accordance with Article 5(7) of the EB Regulation and Article 6(10) of Regulation (EU) 2019/942, the Agency became responsible to adopt a decision concerning the Proposal by the referral received on 24 July 2019.

4. SUMMARY OF THE PROPOSAL

(14) The Proposal consists of the following elements:

(a) The 'Whereas' section and Articles 1 and 2, which include general provisions, the scope of application and the definitions;

(b) Article 3, which includes the high-level design of the aFRR-Platform;

(c) Article 4, which describes the limits for aFRR balancing borders, including the determination of the cross-zonal capacity;

(d) Article 5, which provides the roadmap and timeline for the implementation of the aFRR-Platform;

(e) Articles 6 and 7, which specify the functions and the standard balancing energy products for the aFRR-Platform;

(f) Articles 8 and 9, which include a detailed description of the gate opening time and gate closure time for the standard aFRR balancing energy product bids and the TSO energy bid submission gate closure time, as well as the process for modifying bids and marking bids as unavailable;

(g) Article 10, which describes the organisation of the common merit order lists;

(h) Article 11, which includes the requirements of the optimisation algorithm;

(i) Article 12, which covers the designation of the entity that will perform all the functions of the aFRR-Platform;

(j) Articles 13 to 17, which describe the governance of the platform, the decision-making process, the categorisation and sharing of the costs, the framework for harmonisation of terms and conditions related to balancing, the publication as well as the implementation;

(k) Article 18, which includes provisions on language.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY THE AGENCY

5.1. Initial observations of all regulatory authorities

(15) According to the letter of the Chair of the all Energy Regulators Forum of 24 July 2019, all regulatory authorities jointly identified shortcomings in the Proposal, as well as areas on which they disagreed.

(16) All regulatory authorities agreed that the Proposal should be amended with respect to the use of the terms positive/negative balancing energy, the definition of economic surplus, the coordination of the sequential allocation of cross-zonal capacities, the interaction between the aFRR-Platform and the imbalance netting platform, the specification of the entity performing the functions of the aFRR-Platform and further minor aspects, which can be found in the non-paper.

(17) All regulatory authorities could not agree on two main aspects of the Proposal:

(a) all regulatory authorities could not agree on the proposed definition of the aFRR demand, and more specifically on how it relates to the closed loop control model of the automatic frequency restoration process.

(b) all regulatory authorities could not agree on the choice of the "control demand" model instead of a "control request" model as the basis for the high level design of the aFRR-Platform.

5.2. Consultation of all regulatory authorities and TSOs

(18) The Agency, in close cooperation and consultation with all regulatory authorities and TSOs as detailed in paragraph (10) above, and beyond the above-mentioned issues:

a) discussed with TSOs and all regulatory authorities the comments received during the public consultation (see Section 5.3.) and the views of all regulatory authorities expressed in the aforementioned non-paper;

b) tried to clarify the control model for the automatic frequency restoration process, in order to assess its compliance with the EB Regulation;

c) with respect to updating cross-zonal capacities, further discussed the whole process, the possible efficient design of such a process and the responsibilities of the parties involved, as well as the evolution of this process to a capacity management function;

d) regarding the interaction with the imbalance netting process, clarified the process and the sequence of the optimisation steps;

e) with respect to the standard aFRR product characteristics, further discussed the target for the harmonisation of the full activation time;

f) with respect to modifying bids and changing the availability status of bids, further specified the principles on how and when these changes can be made and clarified the process to address operational security violations;

g) regarding the proposed designation of an entity to perform the functions of the mFRR-Platform, clarified the proposed choice and ensured the legal compliance with the EB Regulation.

5.3. Public consultation

(19) On 28 October 2019, the Agency launched a public consultation on the Proposal, inviting all stakeholders to provide their comments by 18 November 2019. The consultation document asked stakeholders to provide views on three topics, which were deemed as the most relevant: (i) the choice of the control model with respect to the deviations between the standard aFRR balancing energy product bids selected by the activation optimisation function and the standard aFRR balancing energy product bids requested for activation locally by the TSOs, (ii) the full activation time of the standard aFRR product, and (iii) the declaration of bids as unavailable and their modification by TSOs.

(20) The summary and evaluation of the responses received are presented in Annex II to this Decision. It presents the summary of stakeholders' concerns regarding some of the above mentioned issues and in particular on the questions, as well as initial views and proposals made by the Agency:

(a) regarding the choice of the control model, the majority of the respondents agreed with the approach of the Agency to closely monitor the deviations between the standard aFRR balancing energy product bids selected by the activation optimisation function and the ones requested for activation locally by the TSOs. Many stakeholders acknowledged the technical complexity of the automatic frequency restoration process and valued highly the stability ensured by the control demand model described in the Proposal, while some of them considered that the operational concerns should be a second priority for the balancing platforms, compared to the market principles. With respect to indicators for monitoring the deviations, most of them requested the total volume to be reported, as well as the volume per TSO.

(b) regarding the earlier harmonisation of the full activation time of the standard aFRR balancing energy product, the majority of stakeholders agreed with the date proposed by the Agency, although some of them highlighted that the important element is not the date itself, but rather to have a clear timeline with milestones for achieving the target. Some of the stakeholders questioned the benefits gained from the harmonisation of the full activation time in general, and some noted that an earlier harmonisation may have an important negative impact in balancing capacity procurement costs.

(c) regarding the modification of bids and the declaration of bids as unavailable by the TSOs, the majority of stakeholders agreed with providing this possibility to the TSOs – especially, since the gate closure time for the submission of the standard aFRR balancing energy product bids is so early compared to real-time – but not for all the cases listed in the Proposal. Additionally, many of them questioned the transparency of the process and required publication on the time of the action taken by the TSOs. Finally, some of them raised the issue of the

compensation of in-the-money bids that have been declared as unavailable by the TSOs.

(d) regarding other issues, some stakeholders asked for moving the balancing energy gate closure time closer to real-time, for informing the stakeholders more frequently on the implementation progress, for adding provisions with respect to fall-back processes, for harmonising the aFRR TSO demand cycle, for following a different order in the update of the cross-zonal capacity, for additional transparency with respect to processes, as well as the algorithm development and for further harmonisation in general.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

(21) Articles 4(1), 4(2) and 5(2)(a) of the EB Regulation require all TSOs to provide the proposal for the aFRRIF in accordance with Article 21(1) of the EB Regulation. This proposal must be submitted to all regulatory authorities for their approval.

(22) Article 21 of the EB Regulation sets out the requirements for the development of a proposal for an aFRR-Platform and its implementation. In this context, all TSOs are required to develop a proposal for the aFRRIF no later than twelve months after the entry into force of the EB Regulation. TSOs must consult the Proposal in accordance with Article 10 of the EB Regulation.

(23) Article 18 of the EB Regulation contains all the requirements for terms and conditions related to balancing at a Member State level. These national terms and conditions on balancing need to respect the framework for the establishment of the aFRR-Platform pursuant to Article 18(3) of the EB Regulation.

(24) Article 23 of the EB Regulation covers the cost-sharing principles for establishing, amending and operating the aFRR-Platform pursuant to Article 21.

(25) Article 24 of the EB Regulation lays down the requirements for the balancing energy gate closure time for the aFRR-Platform, which shall be as close as possible to real-time. Also, the specific requirements for TSOs with a central dispatching model are listed in this Article.

(26) Article 25 of the EB Regulation provides requirements for standard products and divides them into standard products for balancing energy and balancing capacity. Pursuant to Article 25(1) of the EB Regulation, standard products for balancing energy should be developed as part of the proposals for the implementation frameworks for the European platforms pursuant to Articles 19, 20 and 21 of the EB Regulation. Paragraphs 4 and 5 of this Article include non-exhaustive lists of optional and respectively mandatory characteristics of the standard products to be set out by the methodology.

(27) Article 28 of the EB Regulation lays down the rules for fall-back procedures to be followed when, for example, the coordinated activation of balancing energy fails. In this case, the deviations from the common merit order list are allowed.

(28) Article 29 of the EB Regulation contains the requirements for the activation of balancing energy bids from the common merit order list. This Article also covers the rules for modifying bids after the TSO energy bid submission gate closure time and for changing the bids' availability status.

(29) Article 31 of the EB Regulation lays down the requirements for the activation optimisation function that facilitates the optimisation for the activation of balancing energy bids from different common merit order lists.

(30) Articles 36 and 37 of the EB Regulation list the requirements for using and updating the cross-zonal capacity for the exchange of balancing energy.

(31) Article 58 of the EB Regulation contains provisions for balancing algorithms, which will be operated by the activation optimisation function for the aFRR-Platform.

(32) Article 62 of the EB Regulation describes the possibilities for derogations and especially the derogation from the deadline for joining the aFRR-Platform.

(33) As a general requirement, Article 5(5) of the EB Regulation requires that the Proposal includes a proposed timescale for their implementation and a description of its impact on the objectives of the same Regulation.

6.2. Assessment of the legal requirements

6.2.1. Assessment of the requirements for the development and for the content of the Proposal

6.2.1.1. Development of the Proposal

(34) The Proposal fulfils the requirements of Articles 4(1), 4(2) and 5(2)(a) of the EB Regulation, as all TSOs jointly developed a proposal for the aFRRIF and submitted it for approval to all regulatory authorities.

(35) The procedure for the development of the Proposal did not respect the requirements of Article 21(1) of the EB Regulation, as the Proposal, while submitted by most TSOs by 18 December 2018, which is within twelve months after entry into force of the EB Regulation, was submitted by the last TSO on 11 February 2019. This is in breach of the twelve month-submission deadline. The Proposal was subject to consultation as described in Section 2.1 above.

6.2.1.2. Proposed timescale for implementation

(36) The Proposal fulfils the requirements of Article 5(5) of the EB Regulation with regard to the proposed timescale for implementation of the aFRRIF.

(37) Article 5 of the Proposal lays down the implementation deadlines for the aFRR-Platform and respects the deadlines in accordance with Articles 21(4), (5) and (6) of the EB Regulation. Yet, the Agency made some changes in Article 5 to clarify the obligations of TSOs during the implementation, adding transparency and improving the legal applicability.

(38) Many changes in paragraphs (1), (2) and (3) were made to improve the legal consistency with the text from the EB Regulation. The Agency also clarified in paragraph (2) the relation between the early implementation project PICASSO and the future aFRR-Platform after the approval of the Proposal.

(39) The Agency added in paragraph (4) a regular publication obligation for TSOs on the roadmap for the implementation of the aFRR-Platform to provide more transparency to stakeholders on the state of progress. Also possible derogations of TSOs from deadlines and other provisions from the EB Regulation should be made publicly available on a regular basis to give more clarity to stakeholders.

6.2.1.3. Description of the expected impact on the objectives of the EB Regulation

(40) The recitals in the Proposal provide a description of the expected impact of the aFRRIF on the objectives of the EB Regulation. The relevant objectives set in Article 3 of the EB Regulation are addressed in the recitals but in a general manner only. The Agency added specific sub-paragraphs (a) to (h) in a new recital (19) to address the expected impact on each of the objectives in more details.

6.2.2. Assessment of the high-level requirements of the aFRR-Platform

(41) Pursuant to Article 21(2) of the EB Regulation, the aFRR-Platform, operated by TSOs or by means of an entity the TSOs would create themselves, should be based on common governance principles and business processes and should consist of at least the activation optimisation function and the TSO-TSO settlement function. This European platform should apply a multilateral TSO-TSO model with common merit order lists to exchange all balancing energy bids from all standard products for frequency restoration reserves with automatic activation, except for unavailable bids pursuant to Article 29(14). The assessment of the Proposal with regard to these requirements is addressed in sections 6.2.7 on the entity operating the aFRR-Platform, 6.2.6 on the governance, 6.2.5 on the functions of the aFRR-Platform, 6.2.3 on high-level design and 6.2.13 on the common merit order lists.

6.2.3. Assessment of the requirements for the high-level design of the aFRR-Platform

(42) Pursuant to Article 21(3)(a) of the EB Regulation, the Proposal should include the high-level design of the aFRR-Platform, which is provided in Article 3 of the Proposal. However, some important elements of the high-level design are missing in the Proposal.

(43) Following the request by the regulatory authorities in their referral letter, as well the stakeholders' comments mentioned in paragraph (20)(d), the Agency added a new

paragraph 10 in Article 3 of the Proposal with the description of the fall-back procedures. Pursuant to Article 28 of the EB Regulation, each TSO should ensure that fall-back solutions are in place when the coordinated activation of balancing energy fails. In that case, each TSO may deviate from the common merit order list activation and should inform the market participants as soon as possible. The new paragraph 10, added in Article 3 of the Proposal, describes this process, including specific transparency obligations for TSOs, in order to ensure that balancing service providers ('BSPs') receive timely and accurate information on the application of fall-back procedures.

(44) Article 29(13) of the EB Regulation allows TSOs to establish in the Proposal the conditions or situations in which the limits set out in Article 29(12) of the EB Regulation will not apply. Article 29(12) of the EB Regulation sets limits for the access of the TSOs to the total balancing energy volume of the common merit order list. Article 3(9) of the Proposal allows TSOs full access to the common merit order list, by making use of the possibility provided by Article 29(13) of the EB Regulation, and applying it by default. However, Article 29(13) of the EB Regulation sets a transparency obligation, i.e. when a TSO requests balancing energy bids beyond the limit set out in Article 29(12) of the EB Regulation. In this case, all other TSOs shall be informed. Hence, the Agency added this requirement in Article 3(9) of the Proposal, to make it compliant with the EB Regulation.

(45) Pursuant to Article 29(7) of the EB Regulation, the activation of balancing energy bids shall be based on a TSO-TSO model with a common merit order list, while pursuant to Article 2(21) of the EB Regulation, TSO-TSO model means a model for the exchange of balancing services where the BSP provides balancing services to its connecting TSO, which then provides these balancing services to the requesting TSO. Article 3(14) of the Proposal describes the TSO-TSO model, but the Agency deemed it necessary to amend it in order to better reflect the definition provided in Article 2(21) of the EB Regulation.

6.2.3.1. Updating of cross-zonal capacities

(46) Article 3 of the Proposal describes the main processes executed by the aFRR-Platform, presenting an overview of the inputs and outputs of the functions, as well as the main procedures. However, Article 4 also describes an essential process of the platform, which is the updating of the capacities, which are limiting the balancing energy exchanges on aFRR balancing borders. The Agency changed the definition of these limits from 'aFRR cross-border capacity limits' to 'aFRR balancing border capacity limits'. This change was necessary because the reference to 'cross-border' is usually used for borders between Member States, but, in the context of the aFRR-Platform, the aFRR balancing borders do not always correspond to borders between Member States.

(47) Furthermore, the Agency amended Article 4 to clarify the difference between the aFRR balancing border capacity limits and cross-zonal capacities. The two definitions are the same on aFRR balancing borders, which correspond to a bidding zone border and the aFRR balancing border capacity limits are equal to cross-zonal capacities,

whose definition and updating is further defined in the subsequent paragraphs of Article 4 of the Proposal. In case an aFRR balancing border does not correspond to a bidding zone border, the aFRR balancing border capacity limits should be in principle infinite, but, nevertheless, a limit still needs to be defined for the purpose of the algorithm and for the possibility to impose limitations on balancing energy exchanges between TSOs, which are possible pursuant to Articles 146(3)(c), 147(3)(c), 148 (3)(c), 149(3) and 150(3)(b) of the Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation ('SO Regulation'). Thus, the Agency, in consultation with TSOs and regulatory authorities, defined this technical exchange limit to be 99,999 MW.

(48) Following the request by the regulatory authorities, as mentioned in their non-paper, for a coordinated and centralised approach on the update of the available cross-zonal capacities, the Agency, during the consultation with the regulatory authorities and TSOs, tried to clarify this process in terms of its overall functionality, as well as how it fits the structure of the aFRR-Platform.

(49) Article 37(1) of the EB Regulation requires that, after the intraday-cross-zonal gate closure time, TSOs shall continuously update the availability of cross-zonal capacity for the exchange of balancing energy, and that cross-zonal capacity shall be updated every time a portion of cross-zonal capacity has been used or when cross-zonal capacity has been recalculated. Additionally, Article 37(2) of the EB Regulation requires that TSOs use the cross-zonal capacities remaining after the intraday cross-zonal gate closure time.

(50) Following these requirements, Article 4 of the Proposal describes a process for the update of cross-zonal capacities. This process entails:

(a) defining the initial cross-zonal capacities, which are either the cross-zonal capacities remaining after the single intraday coupling or cross-zonal capacities calculated in accordance with the methodologies pursuant to Article 37(3) of the EB Regulation;

(b) updating the initial values to reflect additional cross-zonal capacities allocated to the RR, mFRR and aFRR process pursuant to Article 38(1) of the EB Regulation;

(c) updating cross-zonal capacities based on the already allocated capacities in balancing timeframe, which can be capacities already allocated in other EU balancing platforms and capacities allocated by other local or regional TSOs processes (e.g. remedial actions); and

(d) updating cross-zonal capacities to reflect different legally possible limitations pursuant to Articles 146(3)(c), 147(3)(c), 148(3)(c), 149(3), 150(3)(b) and 171(1) of the SO Regulation.

(51) The process of updating cross-zonal capacities therefore entails the updating of cross-zonal capacities:

(a) during the operation of the aFRR-Platform (intra-platform level): e.g. due to balancing energy exchanges determined by the aFRR platform or other cross-zonal exchanges or limitations occurring during the operation of the aFRR-Platform;

(b) before the operation of the aFRR-Platform (inter-platform level): e.g. due to balancing energy exchanges determined by the platforms preceding the aFRR-Platform or other cross-zonal exchanges or limitations occurring before the operation of the aFRR-Platform.

(52) The regulatory authorities in their letter requested that the TSOs should coordinate and centralise the process of updating of cross-zonal capacities, as mentioned in paragraph (16) above.

(53) The Agency agreed with the request of all regulatory authorities and questioned the whole design of a decentralised and non-coordinated updating of cross-zonal capacities as proposed by TSOs. It suggested instead that TSOs should adopt a centralised approach, which would be more efficient and more transparent for the process of updating cross-zonal capacities. Following these suggestions, the TSOs acknowledged the need for a coordinated and centralised updating of cross-zonal capacities at the intra platform level, as well as inter-platform level.

(54) In the above context, the Agency also questioned how the whole process of updating cross-zonal capacities fits into the structure of the aFRR-Platform. The Agency understands that all platform processes must be accommodated within the functions of the platform. However, the Proposal does not make clear which function of the platform will perform the process of updating cross-zonal capacities. After consultation with TSOs, the Agency understands that the updating of cross-zonal capacities is not part of the activation optimisation function, since the output of the updating process (i.e. updated cross-zonal capacities) is defined as an input to the activation optimisation function. To this end, the Agency understands that the process of updating cross-zonal capacities does not fit into any of the functions proposed by TSOs and thereby introduced a new platform function, namely the 'capacity management function', which will perform the process of updating cross-zonal capacities. The introduction of this function is needed to comply with Article 21(3)(c) of the EB Regulation, which requires that the aFRRIF defines the functions, which are required to operate the European platform.

(55) Therefore, the Agency defined a requirement for the capacity management function to perform the updating of cross-zonal capacities needed as an input to the activation optimisation function. However, since TSOs originally did not plan to organise the updating of cross-zonal capacities as a central platform function, the Agency finds it reasonable to provide TSOs some additional implementation time for implementing this process as a platform function. This transition period aims to prevent any delays in the implementation of the platforms, since meeting the implementation deadline should have a higher priority than implementing this function. For this reason, the Agency provided two additional years (after the deadline for implementation of the aFRR-Platform) for implementing the capacity management function.

(56) Since the technical analysis of the process of updating cross-zonal capacities revealed that this process requires both intra-platform and inter-platform updating, the Agency considers that the capacity management function should be a central function that serves not only the aFRR platform, but also other platforms, which require the same process of updating cross-zonal capacities. As the implementation frameworks for the other platforms and the functions defined therein are not within the legal scope of the aFRRIF, the Agency provided this obligation conditionally, i.e. if the same obligation for the capacity management function is also imposed in other implementation frameworks. Therefore, the requirement to have the same capacity management function for different platforms is without prejudice to the decisions on the other implementation frameworks.

(57) Finally, Article 4 on the updating of cross-zonal capacities did not provide clarity on which requirement of the EB Regulation it addresses. After the clarification that this process is actually a description of a platform function, the Agency understands that the amended Article 4 aims to address the requirement to provide the high-level design of the aFRR-Platform in accordance with Article 21(3)(a) of the EB Regulation. To reflect this understanding, the Agency made the necessary amendments in Articles 3, 4 and 6 to reflect the introduction of the capacity management function as an aFRR-Platform function.

(58) Furthermore, Article 4 of the Proposal defines a number of cases linked to operational security limits that should be taken into account when updating cross-zonal capacities. The Agency, during the consultation with the regulatory authorities and the TSOs, clarified the cases linked to the HVDC[8] interconnectors, hence added the required references to the SO Regulation in the amended Article 4 of the Proposal.

(59) The Agency also made a few minor amendments to Article 3 of the Proposal, which are reflecting the amendments required pursuant to the assessment of the legal requirements as described in sections 6.2.5, with respect to the reference to the capacity management function, and 6.2.14, with respect to the outputs of the activation optimisation function, as well as some amendments requested by all regulatory authorities aiming to improve legal clarity and consistency.

6.2.4. Assessment of the requirements for the roadmap and timelines for implementation

(60) The Proposal generally fulfils the requirements of Article 21(3)(b) of the EB Regulation by including a roadmap, as well as timelines for the implementation of the aFRR-Platform in Article 5 of the Proposal.

(61) Regulatory authorities expressed concerns on the clarity of the Proposal regarding the point in time when the mFRR-Platform will be operational and the accession roadmap.

[8] High Voltage Direct Current

(62) Therefore, the Agency made some changes to clarify the wording and the meaning of the provisions. In paragraph 4 of Article 5 of the Proposal, the Agency added an obligation for TSOs to update and publish regularly, and at least twice per year, the roadmap for the implementation to ensure transparency towards stakeholders on the progress. This publication shall also contain information on the derogations requested by TSOs and granted by the regulatory authorities pursuant to Article 62(2)(a) of the EB Regulation.

6.2.5. Assessment of the requirements for the functions of the aFRR-Platform

(63) Article 21(3)(c) of the EB Regulation requires that the Proposal includes the definition of the functions needed for the operation of the aFRR-Platform. Moreover, Article 21(2) of the EB Regulation specifies that the aFRR-Platform should consist of at least the activation optimisation function and the TSO-TSO settlement function. Article 6 of the Proposal provides a high-level description of these two functions. Article 6 of the Proposal also mentions that a third optional function may be added in the future, if deemed efficient, when implementing the methodology for cross-zonal capacity calculation, pursuant to Article 37(3) of the EB Regulation.

(64) As explained in Section 6.2.3.1, during the Agency's consultation with the regulatory authorities and TSOs, it was commonly agreed that the update of cross-zonal capacities should be defined as a separate function. Therefore, the requirement of Article 21(3)(c) of the EB Regulation is not fulfilled in its entirety, since the Proposal does not define the function needed for the updating of cross-zonal capacities which is needed for the operation of the aFRR-Platform. The Agency added the capacity management function to the functions needed for the aFRR-Platform in Article 6 of the Proposal, and amended Article 4 of the Proposal to introduce the capacity management function and describe the processes. Further changes related to the introduction of the capacity management function were introduced in Articles 3(3), 3(4)(b), 11(1)(c), recital (10) and recital (12) of the Proposal.

6.2.6. Assessment of the requirements on governance

(65) The Proposal fulfils the requirements of Article 21(3)(d) of the EB Regulation by containing rules on governance and operation of the aFRR-Platform. Article 13 of the Proposal includes the governance structure together with some monitoring obligations for TSOs, while Article 14 includes the rules for the decision-making process. These rules comply with the principle of non-discrimination between TSOs as all member TSOs have a vote in the changes to the aFRR-Platform and participate in both the decision-making body (i.e. the steering committee) and the expert group. The voting rules for the decisions taken by the steering committee regarding the operation of the aFRR-Platform are based on the provisions from Article 4 of the EB Regulation and comply with the principle of non-discrimination and equitable treatment of all member TSOs.

(66) However, since the provisions on the governance were included in the same Article as the monitoring obligations, the Agency split them and moved the two paragraphs on governance from Article 13 of the Proposal to Article 14 of the Proposal, which

now includes all the rules on governance and operation of the aFRR-Platform, whereas Article 13 now includes only provisions on transparency and reporting. This change was needed to improve the overall structure of the aFRRIF and ensure a consistent scoping of each Article.

6.2.7. Assessment of the requirements for the proposed designation of the entity

(67) Article 21(3)(e) of the EB Regulation requires that the Proposal includes the proposed designation of the entity or entities that will perform the functions defined in the Proposal. The second sentence of Article 21(3)(e) of the EB Regulation requires that *"[W]here the TSOs propose to designate more than one entity, the proposal shall demonstrate and ensure:*

(i) a coherent allocation of the functions to the entities operating the European platform. The proposal shall take full account of the need to coordinate the different functions allocated to the entities operating the European platform;

(ii) that the proposed setup of the European platform and allocation of functions ensures efficient and effective governance, operation and regulatory oversight of the European platform as well as supports the objectives of this Regulation;

(iii) an effective coordination and decision making process to resolve any conflicting positions between entities operating the European platform;"

(68) Article 12 of the Proposal specifies that all TSOs shall appoint one entity entrusted to operate all the functions of the aFRR-Platform. Therefore, the Proposal fulfils the requirement of the first sentence of Article 21(3)(e) of the EB Regulation to the extent that it includes a proposal for an entity to perform the functions of the aFRR-Platform.

(69) However, Article 21(2) of the EB Regulation specifies that the aFRR-Platform should be operated by TSOs or by means of an entity the TSOs would create themselves. The Proposal specifies that the aFRR-Platform will be operated by one entity, and that this entity shall be a consortium of TSOs or a company owned by TSOs. The Agency understands that the entity prescribed by the EB Regulation can only be a legal entity that is a legal person and enjoys a full legal capacity. A consortium, on the other hand, typically does not possess full legal capacity as it is not a legal person. Therefore, the Agency understands that the proposed consortium option in Article 12(2) of the Proposal cannot be considered as a single entity with full legal capacity. Therefore, Article 12(2) of the Proposal is not consistent with Article 12(1) of the Proposal and it does not provide legal clarity on the proposed designation of the entity.

(70) Further, the Agency understands that the consortium of TSOs would mean that the aFRR-Platform would be operated by TSOs themselves, which implies that there is more than one entity performing the functions of the aFRR-Platform. In such case, the Proposal would need to be complemented by the requirements of the second sentence of Article 21(3)(e) of the EB Regulation as cited above.

(71) The Proposal does not provide clarity whether one or multiple entities will perform the functions of the aFRR-Platform and, therefore, does not enable legal clarity whether the requirements of the second sentence of Article 21(3)(e) of the EB Regulation are fulfilled.

(72) The Agency consulted with TSOs and regulatory authorities on this topic and requested a clarification of the proposed designation of the entity. TSOs explained that they intend to designate one single TSO to operate the aFRR-Platform.

(73) The Agency analysed this proposal and provided an opinion that the aFRR-Platform operated by an entity that TSOs would create themselves would be a more efficient solution to implement the platform. The Agency provided the following main reasons:

(a) **Operation of cross-platform functions.** During the proceedings, the technical analysis showed that the process of updating cross-zonal capacities is most efficiently facilitated by a capacity management function that is the same across different platforms. Hence, designating the same entity across different platforms would enable that a central capacity management function can support the operation of all platforms. Furthermore, future development of the aFRR-Platform may likely require other cross-platform functions, such as the capacity calculation function, which is already foreseen in Article 6 of the Proposal, and amendments in activation optimisation function, which may in future be upgraded to accommodate automatic linking of bids or even joint activation of bids from different platforms. Therefore, a joint entity for all platforms may better facilitate future development and evolution of all EU platforms, whereas distributed allocation of different functions could become a barrier for future development.

(b) **Direct management control.** Designating a single TSO to operate the aFRR-Platform is based on a contractual framework between all TSOs and the designated TSO by which the designated TSO is obliged to implement decisions and instructions of all TSOs. However, this framework does not enable all TSOs the management control over the aFRR-Platform. Namely, any management failure to implement the decisions or requests from all TSOs or a disagreement between all TSOs and the TSO designated as the entity may create significant risk for interruption in the implementation or operation of the aFRR-Platform and thereby may endanger the integration of EU balancing markets. In case the aFRR-Platform would be operated by a company that TSOs would create themselves, any management failure or disagreement could be easily resolved by exercising management control as TSOs would be the owners of the entity.

(c) **Separating, monitoring, auditing and approving the costs.** Designating a single TSO to operate the aFRR-Platform makes it difficult to clearly establish the costs for operating the platform and separate them from the costs related to national TSO obligations. In particular, all TSOs will have difficulty to monitor and audit the costs attributed to the aFRR-Platform, and to assess whether they have been appropriately separated from other costs of the designated TSO, since all TSOs have no visibility in a designated TSO's financial sheets.

(d) **Maintaining a national responsibility for balancing.** All TSOs claimed that some of the tasks of the aFRR-Platform are part of the national operations under the responsibility of each TSO, performed to balance their system. While the Agency cannot assess whether this is really the case, it notes that delegating such tasks to an entity, without management control over that entity, limits the TSOs' ability to maintain responsibility for these tasks. On the other hand, if these tasks were to be delegated to an entity that TSOs would create and own, TSOs would be able to more effectively maintain national responsibility for these tasks, as they would be able to exert management control over such entity.

(74) TSOs did not agree with the opinion of the Agency and, on 28 November 2019, sent a new text proposal for the designation of the entity for the aFRR-Platform. This proposal specified that the entity operating the functions of the aFRR-Platform will be a single TSO and that the entity will perform the activation optimisation function and the TSO-TSO settlement function. The Agency notified TSOs that additional clarifications are required from TSOs' side for the proposed setup (and listed the concerns that had not been addressed by the TSOs) and that within the framework of a single entity, such a proposal needs two amendments:

(a) the entity must perform all the functions of the platform; and

(b) to ensure compliance with Article 21(2) of the EB Regulation, the Agency proposes to keep both options available to TSOs, i.e. a single TSO or an entity that the TSOs would create themselves.

(75) Following this evaluation by the Agency, the TSOs submitted a new proposal on the designation of the entity on 13 December 2019 (document with title *"TSOs' answers to ACER's questions"*), in which they proposed that all TSOs will designate one entity being a single TSO that will operate the activation optimisation function and the TSO-TSO settlement function. This proposal did not specify exactly which entity would perform the capacity management function or the capacity calculation function, but provided that, each time TSOs will implement a cross-platform function, they will designate one entity entrusted to operate such function, which may be different from the entity designated to operate the aFRR-Platform.

(76) While the proposal sent on 13 December 2019 was submitted after the deadline for consultation that the Agency communicated to TSOs, the Agency nonetheless evaluated the proposal and concluded that it essentially proposes that the functions of the aFRR-Platform would be operated by more than one entity (i.e. one entity for the activation optimisation function and the TSO-TSO settlement function and one or two entities for the capacity management function or the capacity calculation function). The Agency informed TSOs that, as for the original proposal, their last proposal does not comply with the second sentence of Article 21(3)(e) of the EB Regulation as it does not provide the elements required therein and cited in paragraph (67) above.

(77) Following this notification from the Agency, TSOs complemented their last proposal on 18 December 2019 in which they assert that although the capacity management function should indeed be the same across different platforms, such function is not a

function required to operate the aFRR-Platform and therefore dos not need to be included in the list of functions pursuant to Article 21(3)(c) of the EB Regulation. Instead, TSOs consider that the capacity management function is a non-platform function, which can be operated by a different entity which will be a single TSO.

(78) The Agency understands that Article 21(3)(e) of the EB Regulation provides that the Proposal must fulfil different conditions for single entity or multiple entity. If the Proposal is based on the single entity framework, Article 21(3)(e) of the EB Regulation only requires that the Proposal includes the proposed designation of the entity that will perform the functions of the platform. However, if the proposal is based on the multiple entities framework, then additional conditions must be fulfilled, which are listed in the second sentence of Article 21(3)(e) of the EB Regulation.

(79) The Agency disagrees with TSOs' claim that the capacity management function is not a function required to operate the aFRR-Platform. As outlined in the analysis in Section 6.2.3.1, the capacity management function is an essential function required for operation of the aFRR-Platform, since the activation optimisation function requires continuously updated cross-zonal capacities for its operation and this updating of cross-zonal capacities is most efficiently done through a central function.[9] In this respect, the TSO-TSO settlement function (which is considered as the platform function by TSOs) is a much less essential function for the operation of the aFRR-Platform since the activation optimisation function can operate equally efficient without such a function. Given that capacity management function is a function required to operate the aFRR-Platform, the last proposal from TSOs is therefore clearly proposing the multiple entities framework, because it proposes that the capacity management function would be operated by one TSO, while the activation optimisation function and the TSO-TSO settlement functions would be operated by another TSO. Therefore, this proposal does not meet the requirements of the second sentence of Article 21(3)(e) of the EB Regulation.

(80) The Agency evaluated that it cannot amend the proposal from TSOs to provide the requirements of the second sentence of Article 21(3)(e) of the EB Regulation, because such amendments would require significant revision and additions of the Proposal and the Agency is not able to draft most of the elements required by the second sentence of Article 21(3)(e) of the EB Regulation. For example, the Agency is not in a position to draft the rules for effective coordination and decision-making process to resolve any conflicting positions between entities operating the aFRR-Platform. As the consultation period with TSOs, which was already significantly extended, could not be extended further, the Agency could not request TSOs to complement their proposal with these requirements, namely because the time needed to develop these

[9] This conclusion is independent from the transition period of two year referred to in paragraph (55), which the Agency provided to TSOs to implement the capacity management function in order not to delay the implementation of the aFRR-platform.

requirements and for regulatory scrutiny of these requirements would exceed the time needed for the Agency to make a decision (i.e. 6 months).

(81) The latest proposal from TSOs therefore neither proposes a multiple entity framework compliant with Article 21(3)(e) of the EB Regulation nor a single entity framework which would encompass all functions of the aFRR-Platform, including the capacity management function. For this reason, the Agency accepted the part of the TSOs proposal, which defines that the activation optimisation function and TSO-TSO settlement function shall be operated by a single entity. However, as regards the capacity management function, for which all TSOs propose to be performed by another entity, the Agency cannot accept the solution as submitted as it would imply a multiple entity framework that would need to be compliant with Article 21(3)(e) of the EB Regulation.

(82) In paragraph 55 the Agency decided that by two years after the deadline for the implementation of the aFRR-Platform the capacity management function shall be considered as a function required for the operation of the aFRR platform. This means that the exact designation of the entity that will perform this function is not required in this Decision and can be postponed in order to give TSOs more time for discussion, analyses and identification of the most efficient solution for the designation of the entity for this function. Therefore, instead of defining the entity for the operation of the capacity management function, the Agency provided an obligation on TSOs to develop a proposal for amendment of the aFRRIF in which they should propose the designation of the entity that will perform the capacity management function in accordance with Article 21(3)(e) of the EB Regulation. This proposal for amendment needs to be submitted for regulatory approval no later than eighteen months before the deadline for the implementation of the capacity management function, which is two years after the implementation of the aFRR-Platform. However, in case TSOs intend to implement the capacity management function at the time of implementation of the aFRR-Platform, the TSOs should develop a proposal for the designated entity to operate this function sufficiently before the implementation of the aFRR-Platform.

(83) The final provisions on the entity adopted in this Decision therefore allow the activation optimisation function and TSO-TSO settlement function of the aFRR-Platform to be operated by a single TSO or by means of an entity that the TSOs would create themselves in accordance with Article 21(2) of the EB Regulation. It further complies with Article 21(3)(e) of the EB Regulation as it clearly proposes a single entity and, therefore, the requirements of the second sentence of Article 21(3)(e) of the EB Regulation do not need to be met. Finally, this Decision leaves the decision on the entity performing the capacity management function open and requires from TSOs to develop a proposal in which they need to propose the designation of the entity performing this function in accordance with Article 21(3)(e) of the EB Regulation.

(84) Without prejudice to the legally possible options referred to in Article 21(2) of the EB Regulation that the aFRR-Platform can be operated by TSOs or by means of an entity TSOs would create themselves, the Agency considers that the proposal for the aFRR-Platform operated by TSOs does not sufficiently address the concerns raised by the Agency in paragraph 73 above. The Agency is of the opinion that, in the long run,

there are considerable arguments in favour of all the functions of the aFRR-Platform being operated by an entity that the TSOs would create themselves and that this entity would operate also other European balancing platforms.

6.2.8. Assessment of the requirements for the harmonisation of the terms and conditions

(85) The Proposal fulfils the requirements of Article 21(3)(f) of the EB Regulation regarding the framework for the harmonisation of the terms and conditions related to balancing. Article 16 of the Proposal sets out the process for future harmonisation needs of the aFRR-Platform into the terms and conditions for balancing where first an amendment to the aFFRIF in accordance with Article 6(3) of the EB regulation would be made and then each TSO has to implement the changes at national level. The process includes a consultation in accordance with Article 10 of the EB Regulation.

(86) Regulatory authorities expressed a concern on the clarity of the proposed steps to be taken at national and at European level for the further harmonisation of terms and conditions.

(87) Therefore, the Agency added a new paragraph in Article 16(2) to clarify the relation between national terms and conditions and the decision on the Proposal.

6.2.9. Assessment of the requirements for cost-sharing

(88) The Proposal fulfils the requirements of Article 21(3)(g) of the EB Regulation by including in Article 15 of the Proposal the rules on cost-sharing and categorisation of costs. As required by Article 23 of the EB Regulation, regarding the categorisation of the costs into common, regional and national ones, Article 15(1) of the Proposal follows the same rule for splitting them into three categories, and the paragraphs 2, 6 and 10 of Article 15 of the Proposal further specify these categories. Additionally, pursuant to Article 23(3) of the EB Regulation, the paragraphs 3, 5, 7 and 9 of Article 15 of the Proposal define the sharing of the common and regional costs.

(89) Furthermore, pursuant to Article 23(6) of the EB Regulation, in case the aFRRIF proposes that an existing project will evolve into the aFRR-Platform, all TSOs participating in the existing project may propose that a share of the costs, incurred before the approval of the Proposal directly related to the development and implementation of this project, and assessed as reasonable, efficient and proportionate, is considered as part of the common costs pursuant to Article 23(2)(a) of the EB Regulation. Article 15 of the Proposal specifies that any costs from the PICASSO project – which will evolve into the aFRR-Platform pursuant to Article 5 of the Proposal – before 1 January 2018 should not be considered as historical costs, but the costs between 1 January 2018 and until the approval of the Proposal may be regarded as common or regional costs. The Agency amended Article 5(2) of the Proposal to clarify that the decision on this possibility should be taken by all member TSOs.

(90) The Agency added a clarification in Article 15 of the Proposal that the cost-sharing rules apply to member TSOs and third countries to align it with Article 23(3) and (5) of the EB Regulation.

6.2.10. Assessment of the requirements for the balancing energy gate closure time

(91) The Proposal fulfils the requirements of Article 21(3)(h) of the EB Regulation, which requires the definition of the balancing energy gate closure time for all standard products for aFRR in accordance with Article 24 of the EB Regulation, by setting, in Article 8, the balancing energy gate closure time to 25 minutes before real-time for the aFRR-Platform. Article 24 of the EB Regulation requires that all TSOs harmonise within the Proposal the balancing energy gate closure time for standard aFRR balancing energy products at the Union level. Moreover, the balancing energy gate closure time should: (a) be as close as possible to real-time; (b) not be before the intraday cross-zonal gate closure time; (c) ensure sufficient time for the necessary balancing processes.

(92) The proposed balancing energy gate closure time (i.e. 25 minutes before real-time) is after the intraday cross-zonal gate closure time (set at 60 minutes before real-time), hence it respects the requirement of Article 24(2)(b) of the EB Regulation. Regarding the other two requirements of Article 24(2) of the EB Regulation, they are to some degree contradicting, as the requirement for being as close as possible to real-time needs to be assessed together with the requirement to ensure sufficient time for the necessary balancing processes. The TSOs, in their explanatory document, describe the market considerations with respect to the definition of the balancing energy gate closure time, but they also refer to the technical boundaries that are set by the amount of time used by the platform and the TSOs to perform consistency checks, congestion management analysis, fall-back rules and IT communications.

(93) As mentioned in paragraph (20)(d), a few stakeholders asked for a balancing energy gate closure time even closer to real-time and questioned the processing time that TSOs would take for themselves to submit the received standard aFRR balancing energy product bids to the aFRR-Platform. These stakeholders also argue that setting the balancing energy gate closure time closer to real-time than proposed would limit the implications of this gate closure time on some national intraday markets, which will be open even after the proposed balancing energy gate closure time (i.e. 25 minutes before real-time).

(94) The Agency understands that the TSOs have taken into account the concerns from stakeholders, with respect to the interactions between the balancing platforms, as well as with the intraday market, and also the required technical processes that need to be finalised before real time. The Agency also considers that, since there is no early implementation project for the aFRR-Platform, no previous experience can be used, in order to assess the time needed for the technical processing between the bid submission by the BSPs to the TSOs and the bid submission by the TSOs to the aFRR-Platform. However, the Agency understands that shorter balancing energy gate closure time would allow market participants to also react to changes closer to real-time. While, currently this option is deemed to be too risky for the implementation of the aFRR-Platform, it should, in the Agency's opinion, be explored after the implementation of the aFRR-Platform. Therefore, the Agency currently sees no need to make changes to the balancing energy gate closure time of 25 minutes before real-time, since it gives TSOs sufficient time to assess the received standard aFRR

balancing energy product bids for possible risks to operational security by errors in bids or the process of submission. Sufficient time is also needed for the conversion of specific products in accordance with Article 26 of the EB Regulation.

(95) Article 8 of the Proposal includes also the rules for central dispatching systems, which deviate due to specifics of the integrated scheduling process. In addition to the gate closure time, Article 8 of the Proposal also defines a common gate opening time for the submission of standard aFRR balancing energy product bids at the latest 12:00 market time on the previous day.

(96) The Agency made small changes in this Article to clarify that only the participating TSOs in self-dispatching system receive the bids from BSPs.

6.2.11. Assessment of the requirements for standard products

(97) The Proposal fulfils the requirements of Article 21(3)(i) and Article 25 of the EB Regulation by defining one standard mFRR product which complies with the requirements from Article 25 of the EB Regulation. Article 25 of the EB Regulation lists all the requirements for standard balancing energy and capacity products. Pursuant to Article 25(1) of the EB Regulation, standard products for balancing energy should be developed as part of the proposals for the implementation frameworks for the European platforms, pursuant to Articles 19, 20 and 21 of the EB Regulation. Therefore, the definition of the standard aFRR balancing energy product in Article 7 of the Proposal fulfils the requirement of Article 25(1) of the EB Regulation.

(98) Article 25(4) of the EB Regulation incudes the characteristics of a standard product bid that may be set in the standard product definition. Most of these characteristics are defined for the standard aFRR product in Article 7 of the Proposal, namely the full activation time, the deactivation period, the minimum and maximum quantity, the validity period and the mode of activation.

(99) Moreover, Article 25(5) of the EB Regulation lists the minimum set of variable characteristics of a standard product, them being the price of the bid, the divisibility, the location and the minimum duration between the end of the deactivation period and the following activation. Paragraphs 2 and 4 of Article 7 of the Proposal provide specifications for all the variable characteristics listed in Article 25(5) of the EB Regulation and describe a few more, in a non-exhaustive list. To ensure harmonisation and legal clarity, the Agency amended the list to be an exhaustive one in terms of the standard aFRR balancing energy product characteristics, while also allowing the TSOs to define more at national level, in accordance with the national terms and conditions for BSPs, pursuant to Article 18 of the EB Regulation.

(100) Furthermore, Article 25(6) of the EB Regulation requires that standard products should: (a) ensure an efficient standardisation, foster cross-border competition and liquidity, and avoid undue market fragmentation; (b) facilitate the participation of demand facility owners, third parties and owners of power generating facilities from renewable energy sources, as well as owners of energy storage units as BSPs. The standard aFRR balancing energy product defined in Article 7 of the Proposal does not

introduce any technology linked requirements, hence it facilitates the participation of all possible BSPs. Moreover, it ensures an efficient standardisation, fosters liquidity and avoids undue market fragmentation, since only one standard aFRR product has been specified for the aFRR-Platform.

(101) Article 31(4) of the EB Regulation, requires that TSOs ensure that the balancing energy bids submitted to the common merit order lists are expressed in euros and make reference to the market time unit. Article 7(2) of the Proposal specifies that the price of the standard aFRR balancing energy product bid shall be provided in EUR/MWh, together with the validity period the bid refers to. The validity period makes the required reference to the relevant market time unit. Therefore, the Proposal fulfils the requirements of Article 31(4) of the EB Regulation.

6.2.11.1.Full activation time

(102) As mentioned above, Article 25(4) of the EB Regulation includes the characteristics of a standard product bid that may be set in the standard product definition. Although Article 25(4) of the EB Regulation does not specify clear requirements for the elements of the standard product to be standardised, the Agency considers that the full activation time is the most important product feature that needs to be standardised.

(103) TSOs recognise this fact because they propose the standardisation of the full activation time, although not from the beginning of the operation of the aFRR-Platform. In particular, Article 7(1)(a) of the Proposal specifies that each TSO shall define the full activation time of the standard aFRR balancing energy product for the time period until 17 December 2025 in their terms and conditions for BSPs, in accordance with Article 18 of the EB Regulation, while the full activation time of the standard aFRR balancing energy product shall be 5 minutes starting from 18 December 2025.

(104) Therefore, the Agency understands that the TSOs proposed a sort of derogation process for this standardisation, which, by default, would be expected to occur at the implementation date of the aFRR-Platform. As the proposed derogation may have a significant impact on existing and potential new participants on the market for standard aFRR balancing energy products, the Agency decided to consult all stakeholders on this implicit derogation. As the Agency was concerned that the delayed standardisation could have detrimental effects on the competition, level-playing field and participation of renewable energy sources and demand-response (including aggregation facilities and energy storage), the Agency also consulted on a possible alternative deadline which would be 18 December 2024.

(105) As mentioned in paragraph (20)(b), most of the stakeholders support the early standardisation, acknowledging that the full activation time is one of the most important characteristics of the standard aFRR product, and its standardisation contributes to the creation of a level-playing field. Some of them also argue in favour of an earlier standardisation, e.g. from the starting date of the implementation of the aFRR-Platform. Apart from the market benefits, they also identify gains on the technical aspects since, according to them, a non-standardised full activation time would mean very different response ramps in the same synchronous area, which would

lead to disturbances in the correction of the frequency deviations. However, some of the stakeholders highlight the impact on liquidity on the aFRR-Platform, and also the increased cost of the aFRR procurement in case of a shorter full activation time, and some of them also question the proposed value of the full activation time (5 minutes). Finally, some stakeholders mention that an important aspect of the standardisation is the clear target and path, and they ask for a concrete time-plan with milestones by each TSO for achieving the target of the 5 minutes full activation time by 18 December 2024.

(106) The Agency shares the market concerns raised by stakeholders with respect to achieving a level-playing field for the BSPs that would foster efficient competition and allow more efficient pricing for the standard aFRR balancing energy. The Agency reviewed the proposed derogation timeline against the requirements of Article 25(6) and the objectives of the EB Regulation. The significant delay in the standardisation of the full activation time as defined in the Proposal (i.e. by 18 December 2025) delays the creation of a level-playing field and a fair competition between different BSPs with different flexibility. Namely, significant delay in the standardisation of full activation time allows for competition between market participants with different flexibility, i.e. market participants with low flexibility (i.e. longer full activation time) and market participants with higher flexibility (i.e. shorter full activation time). Therefore, a significant delay in the standardisation of the full activation time is contradicting one of the main objectives of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity ('Electricity Regulation'), namely:

(a) Article 1(a), which clarifies that the Electricity Regulation aims to set the basis for an efficient achievement of the objectives of the Energy Union and, in particular, the climate and energy framework for 2030 by enabling market signals to be delivered for increased efficiency, higher share of renewable energy sources, security of supply, flexibility, sustainability, decarbonisation and innovation; and

(b) Article 3(c), which requires that market rules shall facilitate the development of more flexible generation, sustainable low carbon generation, and more flexible demand;

(107) Moreover, the efficiency of the European balancing market, and of balancing in general is not achieved, as the optimisation in the aFRR-Platform does not take into account the dynamics of the BSPs' response, while the different speed in their response across the LFC areas may have effects in solving imbalances at European level; hence, the objective, pursuant to Article 3(1)(b) of the EB Regulation, is not fulfilled. As mentioned in recital (13) of the EB Regulation *"in order to allow an exchange of balancing services, the creation of common merit order lists and adequate liquidity in the balancing market, it is necessary to regulate the standardisation of balancing products"*; the non-standardisation of the full activation time endangers the integration of balancing markets, not meeting the objective pursuant to Article 3(1)(c) of the EB Regulation. Therefore, the Agency concludes that the proposed derogation does not fulfil the objectives of the EB Regulation.

(108) In conclusion and in light of the above concerns, the Agency deems it appropriate and proportionate to shorten the delay in the standardisation of the full activation time by one year, such that the amended deadline is 18 December 2024.

6.2.12. Assessment of the requirements for the TSOs' energy bid submission gate closure time

(109) The Proposal fulfils the requirements of Article 21(3)(j) of the EB Regulation, as Article 9 of the Proposal sets the TSOs' energy bid submission gate closure time to 10 minutes before the beginning of the validity period of the respective standard aFRR balancing energy product bid. Article 9 of the Proposal also includes the rules for modification of bids in accordance with Article 29(9) of the EB Regulation and the rules for unavailability in accordance with Article 29(14) of the EB Regulation.

6.2.12.1. Declaring bids as unavailable or their modification by TSOs

(110) Article 9 of the Proposal suggests that TSOs have the possibility to modify bids in accordance with Article 29(9) of the EB Regulation or declare bids as unavailable in accordance with Article 29(14) of the EB Regulation. Additionally, Article 7(5) of the Proposal specifies the possibility of the connecting TSO to modify the bids (including its whole availability) if the same demand or generation unit has already been activated in preceding balancing process and is therefore no longer available or is available with different volume.

(111) The Agency understands the importance of providing the TSOs with the flexibility to act, by declaring bids as unavailable, when operational security limits are endangered or where the bids are no longer available because some other bids, which are conditional on these bids, have been activated outside the aFRR-Platform after the aFRR balancing energy gate closure time. However, because TSOs are buyers of balancing energy, the Agency deems it important that the option by which these same TSOs can modify the supply of the balancing energy are strictly regulated, justified and transparent. Therefore, in order to ensure that TSOs are not unduly changing the bids submitted by BSPs or impacting the market functioning, the cases for bid modification and changes of the availability status need to be limited. In addition, a more transparent framework is necessary, so that every time this option is used, the responsible TSO provides a reason for changing a bid, notifies the affected BSPs and publishes and reports on a yearly basis on the usage of this option in more details. The main motivation of this framework is to clearly specify and limit cases when TSOs can modify the bids submitted by BSPs in order to ensure that TSOs do not unduly discriminate between BSPs and the bids they have submitted to them.

(112) Based on the above, the Agency consulted on a proposal for clarifying the main aspects of such actions, including the timing for taking such actions, the process on the aFRR-Platform, the reasons for the changes, limitation to the bids that can be changed, and obligations on TSOs regarding monitoring and reporting.

(113) The majority of stakeholders supported the Agency's proposed amendments and clarifications to the provisions on the modification of bids and changing their

availability status, while some only provided their support if the use of this option would be closely monitored and TSOs would provide reasons for the changes. Some stakeholders did not support the Agency's proposal and some others had concerns regarding the transparency of this feature in the aFRR-Platform.

(114) The Agency made major changes to Article 9 of the Proposal to provide clarity to the process for modification of bids and changing the availability status of bids, following also the comments received from stakeholders.

(115) In paragraph (2), the Agency clarified that the bids can be modified in accordance with Article 29(9) of the EB Regulation and the availability status of bids can be changed in accordance with Article 29(14) of the EB Regulation, before the TSOs' energy bid submission gate closure time. After the TSOs' energy bid submission gate closure time, these changes are only possible when new information becomes available, affecting the possibility to activate a standard aFRR balancing energy product bid. The TSOs should define the latest possible time until such changes are possible.

(116) The Agency added a new paragraph 3 to Article 9 of the Proposal, which specifies that the bids affected by the change should still be submitted to the aFRR-Platform and the changes of bids are limited to changes of available volume or availability status only. Additionally, the Agency specifies the publication requirement stemming from Article 12(3)(b)(v), extending it to all cases of changes and only the ones related to unavailability status, including also the justification for the change.

(117) The Agency added a new paragraph 4 to Article 9 of the Proposal, where the cases for changing the bids are listed. The changes of bids are limited to cases related (a) to violations of operational security limits within the TSO or DSO control areas, and (b) to activation of bids, which are conditional on bids that have been activated outside the aFRR-Platform in other balancing processes. The first case allows changes to bids, when not allowing such changes could lead to violation of operational security limits; it mainly covers incidents, where there is a technical unavailability of the reserve providing unit. In this case, BSPs have to report any unavailable volumes even after the balancing energy gate closure time to the TSO without undue delay in accordance with Article 24(4) of the EB Regulation and in accordance with Article 158(4)(b) of the SO Regulation[10]. Since BSPs, in accordance with Article 24(3) of the EB Regulation, shall not update their submitted bids after the balancing energy gate closure time and because they also would not have the technical ability, the TSO instead should make the changes under the condition that this is necessary for maintaining operational security. The second case allows BSPs to submit conditional bids for different balancing processes, among them being also standard aFRR balancing energy product to the aFRR-Platform, in order to allow them to arbitrage

[10] Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation

between different platforms. Since the balancing energy gate closure time for the aFRR-Platform and the mFRR-Platform are both at 25 minutes before real-time, this does not allow for sequential bidding, so the BSPs should choose where to bid or bid in both platforms with the risk of not being activated. In order to increase the possibility for BSPs to get an activation for a submitted bid, the possibility of submitting conditional bids is introduced and is handled via Article 9(4)(b) of the amended Proposal by the Agency, with a change to the availability status.

(118) The Agency added paragraph (5) in Article 9 of the Proposal, to clarify the principles for non-discrimination for bids with a capacity contract and balancing energy only bids, in accordance with Article 16(7) of the EB Regulation. The Agency also clarified that national terms and conditions on balancing should ensure non-discrimination between available standard aFRR balancing energy product bids and unavailable standard aFRR balancing energy product bids. This is to ensure non-discrimination between BSPs in accordance with the objective of Article 3(2)(a) of the EB Regulation.

(119) The Agency added paragraph (6) in Article 9 of the Proposal, to ensure transparency on the process of changing bids. Based on this paragraph, TSOs have to provide a reason for any change they make to a bid after the TSOs' energy bid submission gate closure time, including information on the party requesting the change, and if applicable the operational security limit expected to be violated or the concerned network element or the modified bid. The last case (i.e. where the modified bid should be reported) covers the situation where, due to conditional bids, a BSP may ask for changes in the available volume of a bid.

(120) The Agency added paragraph 7 to Article 9 of the Proposal, which specifies that the changes to bids related to congestions should be possible only for the most expensive bids (which are less likely to be activated), taking also into account their relative physical influence on the concerned network element.

(121) With respect to monitoring and reporting, the Agency added paragraph 8 to Article 9 of the Proposal, including the obligation for the TSOs to inform all other TSOs and the affected BSPs on the changes by 30 minutes after the end of the relevant validity period, and to report this information in aggregated form in the annual report of Article 13 of the Proposal.

6.2.13. Assessment of the requirements for common merit order lists

(122) The Proposal fulfils the requirements of Article 21(3)(k) and Article 31 of the EB Regulation by defining the process for the creation and update of common merit order lists for all submitted standard aFRR balancing energy product bids, in accordance with Article 31 of the EB Regulation. Article 31(2) of the EB Regulation specifies that common merit order lists should consist of balancing energy bids from standard products, and that all TSOs should establish the necessary common merit order lists for the standard products. Moreover, positive and negative balancing energy bids shall be separated in different common merit order lists. Additionally, Article 31(3) of the EB Regulation requires that each activation optimisation function uses at least one

common merit order list for positive balancing energy bids and one common merit order list for negative balancing energy bids. Article 10(5) of the Proposal clearly describes the creation of two separate common merit order lists, one for standard aFRR positive balancing energy product bids and one for standard aFRR negative balancing energy product bids, to be used by the activation optimisation function of the aFRR-Platform. Therefore, the Proposal fulfils the requirements of Articles 21(3)(k) and 31 of the EB Regulation, with respect to the organization of common merit order lists.

(123) The Agency made minor changes to the wording to align the text with the EB Regulation and clarified that only the participating TSOs in self-dispatching system receive the bids from BSPs and forward them to the aFRR-Platform.

6.2.14. Assessment of the requirements for the description of the algorithm

(124) The Proposal does not fulfil the requirements of Article 21(3)(l) and Article 58 of the EB Regulation regarding the description of the algorithm for the operation of the activation optimisation function of the aFRR-Platform because of the reasons detailed below.

(125) Article 58(1) of the EB Regulation requires this algorithm to: (a) respect the activation method of balancing energy bids pursuant to Article 29 of the EB Regulation; (b) respect the pricing method for balancing energy pursuant to Article 30 of the EB Regulation; (c) take into account the process descriptions for imbalance netting and cross-border activation pursuant to Part IV Title III of Regulation (EU) 2017/1485. Additionally, Article 58(4) of the EB Regulation requires this algorithm to: (a) respect operational security constraints; (b) take into account technical and network constraints; (c) if applicable, take into account the available cross-zonal capacity. Moreover, some of the requirements, included in Article 31 of the EB Regulation for the optimisation function, affect also the requirements for the optimisation algorithm, as mentioned in section 6.2.14.2 below.

(126) Article 3 of the Proposal provides a high-level description of the aFRR-Platform, hence also of the algorithm, while Article 11 of the Proposal describes the optimisation algorithm, i.e. the inputs, the objective functions, the constraints and the outputs. Additionally, Article 4 of the Proposal describes the update of cross-zonal capacities that serves as one of the constraints (i.e. inputs) to the algorithm.

6.2.14.1. Assessment of the requirements pursuant to Article 58(1) of the EB Regulation

(127) The methodologies, pursuant to Articles 29 and 30 of the EB Regulation, have not been approved yet, however, the Proposal refers to them. Article 3 of the Proposal specifies that the aFRR-Platform should implement: (a) the methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process in accordance with Article 30 of the EB Regulation, and (b) the classification methodology for the activation purposes of balancing energy bids in accordance with Article 29 of the EB Regulation. Moreover, in the outputs of the algorithm in Articles 3 and 11 of the Proposal, the prices for aFRR

balancing energy, as well as the prices for cross-zonal capacity used for the exchange of standard aFRR balancing energy products, determined using the methodology in accordance with Article 30 of the EB Regulation, are included.

(128) The Proposal takes into account the process descriptions for imbalance netting and cross-border activation pursuant to Part IV Title III of Regulation (EU) 2017/1485, in the definition of the inputs and outputs of the Algorithm, in Articles 2, 3 and 11 of the Proposal. Moreover, given the close interaction between the imbalance netting process and the automatic frequency restoration process, Article 11(6) of the Proposal describes the sequential processes in the context of the interaction between the aFRR-Platform and the IN-Platform, under different geographical scopes. This is because, pursuant to Article 146 of the SO Regulation, the control target of the imbalance netting process aims at reducing the amount of simultaneous counteracting FRR activations.

(129) The Agency further clarified this interaction between the imbalance netting process and the automatic frequency restoration process during the consultation with the regulatory authorities and TSOs. Following this consultation, the Agency amended the Proposal to improve clarity regarding the process sequence and the inputs and outputs after each step.

(130) Moreover, the Agency deleted paragraph (5) in Article 1 of the Proposal, which suggested that the aFRR-Platform will implement and eventually replace the IN-Platform. First, the Agency notes that the scope of the aFRR-Platform does not cover the European framework for the imbalance netting platform and, therefore, any provisions for the aforementioned platform should be described in the relevant proposal pursuant to Article 22(1) of the EB Regulation. Second, the Agency considers that both platforms can be operated separately by using the same activation optimisation function (and the underlying optimisation algorithm) across both platforms.

6.2.14.2. Assessment of the requirements pursuant to Articles 29 and 31 of the EB Regulation

(131) Articles 29 and 31 of the EB Regulation include requirements for the activation optimisation function and the selection of standard aFRR bids that affect the design of the optimisation algorithm. More specifically, Article 31(7) of the EB Regulation requires the activation optimisation function to *"select balancing energy bids and request the activation of selected balancing energy bids from the connecting TSOs where the balancing service provider, associated with the selected balancing energy bid, is connected"*, while, according to Article 31(8) of the EB Regulation, *"[t]he activated balancing service providers shall be responsible for delivering the requested volume until the end of the delivery period."* Furthermore, pursuant to Article 29(6) of the EB Regulation, *"[e]ach connecting TSO shall ensure the activation of the balancing energy bid selected by the activation optimisation function."* Articles 3 and 11 of the Proposal list the outputs of the optimisation algorithm; one of them is the volume of activations of balancing energy from standard aFRR balancing energy products, which should be the sum of the volume of all the activated bids, but there is no reference in the outputs to the bids, which are selected by the activation

optimisation function and their corresponding volume. The Agency understands that the omission of individual bids from the list of outputs from the activation optimisation function is intentional and stems from the choice of the control model made by the TSOs for the design of the aFRR-Platform.

(132) According to Article 11 of the Proposal, the aFRR demand, which is sent as an input to the activation optimisation function, is the frequency restoration control error ('FRCE') of each TSO and the output of the activation optimisation function is the FRCE for each TSO in the form of the total volume of requested activation of balancing energy from standard aFRR balancing energy products. This output is then fed as input to each TSO's local load-frequency controller, which has specific dynamic settings that essentially impose a time delay between the time the instantaneous corrected FRCE is received from the activation optimisation function, and the time when the signal for activation of aFRR bids is sent to BSPs. This is called control demand model, as further described in the explanatory document, and it is the model that TSOs use in the context of the International Grid Control Cooperation ('IGCC') project for the imbalance netting.

(133) The Agency understands that, in this approach, there will be systematic and persistent differences between the bids selected by the activation optimisation function and the bids activated by the TSOs locally. This is because of the time delay as described above and because each local load-frequency controller operates on aFRR bids with different full activation times.

(134) The TSOs also analysed another solution where the input to the activation optimisation function is not the FRCE from each TSO but rather the signal for activation of aFRR balancing energy, which is the output of the local load frequency controller. Then, the output of the activation optimisation function would be the volume of selected aFRR bids, which are sent to TSOs and then directly to BSPs without delays or modifications. This is what is called a control request model. This approach would ensure consistency between the activated volume of bids as determined by the activation optimisation function and the requests for activated volumes sent by TSOs to BSPs.

(135) However, TSOs concluded that the implementation of such solution would be too risky for operational security and that much further analyses and testing would be needed to identify the feasibility of this model. Therefore, the Agency understands that TSOs are currently not in a position to implement a solution that would ensure full consistency between selected and activated aFRR bids.

(136) The regulatory authorities, in their referral letter, present arguments in favour of both models, as mentioned in paragraph (17)(b) above, since this was one of the points of disagreement among them. They assess the legal compliance of the proposed model with the EB Regulation and raise concerns both on the technical aspects of the cross-border frequency restoration process, which may not be respected in case a different control model is implemented, and on the market implications the approval of the proposed model would have.

(137) Based on the abovementioned provisions, the Agency considers that the proposed model is in general not compliant with the EB Regulation, because it does not ensure a one-to-one relationship between bid activations determined by the activation optimisation function and bid activations instructed by each TSO to their BSPs locally. Nevertheless, the aFRR IF proposal should ensure the compliance with the EB Regulation requirements. In particular, any deviations between selected and activated aFRR bids should first be closely monitored and, if these deviations are significant, TSOs should explore other options to mitigate them. Further, transparency on these deviations is needed pursuant to Article 29(5) of the EB Regulation. Therefore, in the event that the activation of balancing energy bids deviates from the results of the activation optimisation function, the TSO shall publish the information about the reasons for the occurrence of such deviation in a timely manner.

(138) The Agency consulted stakeholders on this topic and, as mentioned in paragraph (20)(a), the comments, although diverging regarding the priorities that the aFRR-Platform should respect, support the close monitoring of the deviations resulting from the proposed model.

(139) To enable such monitoring, the Agency amended the Proposal, in particular Articles 3 and 11 of it, such that the outputs of the activation optimisation function shall be the selected bids separately and not only the total sum as proposed by TSOs, as required by Article 31(7) of the EB Regulation. This will still enable TSOs to sum up the volume of these bids to be used as an input to the local LFC controller (in case of control demand model), but will also enable TSOs to identify deviations between the bids selected by the activation optimisation function and the bids activated by TSOs. In the context of monitoring the compliance with the requirements of the EB Regulation, the Agency amended Article 13 of the Proposal by adding two new paragraphs 4 and 5 with the monitoring on an annual basis of the volume and frequency of these deviations, and with the obligation for TSOs to provide data on deviations, when requested by the competent regulatory authority or the concerned BSP. In particular, the TSOs should report: (a) the deviations per LFC area and per aFRR MTU, (b) the total annual volume of deviations per LFC area, and (c) the total annual volume of deviations in all LFC areas.

(140) Finally, the Agency considers that TSOs should develop alternative solutions in case such deviations are important and significantly affect the efficiency of the aFRR exchanges. To that end, the Agency added in the new paragraph 3 of Article 13 of the Proposal the requirement for a proposal for amendments of the aFRR IF that would be required based on the respective assessment.

6.2.14.3. Other amendments on the optimisation algorithm

(141) Article 11 of the Proposal describes the optimisation algorithm, but it does not specify the process how the algorithm is performing the activation optimisation function. In the explanatory document, the concept of the optimisation cycle is introduced: *"inputs are directly used by the algorithm on each optimisation cycle aiming at determining the selected bids for activation and the [cross-border marginal price] per uncongested area"*. This information, although crucial for the operation of the aFRR-Platform, is

not included in the Proposal. Moreover, the length of this period is not specified even in the explanatory document.

(142) During the consultation with the regulatory authorities and TSOs, the Agency tried to further specify the optimisation cycle and to define a value for its length. However, since it is closely linked with the implementation of the aFRR-Platform, and many technical aspects of it are not yet known, the TSOs were not able to provide a definitive value without the risk that predefining this value would constrain the efficient development of the aFRR-Platform. Additionally, since the length of the optimisation cycle affects also the communication with stakeholders (as it also defines the aFRR MTU and, consequently, all the publication and settlement processes), the Agency deemed it necessary to disentangle the requirements for the BSPs from the potential changes in the optimisation cycle.

(143) Therefore, the Agency amended Article 11 of the Proposal to specify that the outputs of the optimisation algorithm are obtained in each optimisation cycle, and added a new paragraph 7 in Article 11 of the Proposal with the requirement for TSOs to publish the length of the optimisation cycle six months before the deadline for the implementation of the aFRR-Platform, and at least one month before the implementation of each subsequent modification. Additionally, the Agency added in paragraph 7 of Article 11 of the aFRRIF an obligation to TSOs to establish a data publication and communication format for data related to aFRR that is independent from the changes in the optimisation cycle.

(144) Finally, the Agency replaced the term 'balancing market time unit' in Article 2 of the Proposal with 'aFRR market time unit' and defined it as the length of the optimisation cycle for the aFRR optimisation. Article 2(g) of the Proposal defines the balancing market time unit and sets it equal to 15 minutes, based on the length of the imbalance settlement period. The market time unit is defined in Article 2(19) of Regulation 543/2013, as *"the period for which the market price is established or the shortest possible common time period for the two bidding zones, if their market time units are different."* However since, pursuant to Article 30 of the EB Regulation, there is no requirement for setting one price for the balancing energy across the different processes, the Proposal cannot define one single market time unit for the whole balancing timeframe; each process, where a market price is established should have its own market time unit. Additionally, since the prices pursuant to the methodology of Article 30 of the EB Regulation are included in the outputs of the activation optimisation function, they are defined per optimisation cycle. Therefore, the Agency set the value of the aFRR market time unit equal to the optimisation cycle.

6.2.15. <u>Amendments necessary to ensure legal clarity and consistency with existing legal provisions</u>

(145) Throughout the Proposal, the Agency made changes to clarify the obligations of the participating TSO versus the connecting TSO. For that reason, the term submitting TSO was replaced with one of the above mentioned notions for TSOs. These changes were made in Article 3(4)(c) to replace submitting TSO with participating TSO. The changes concerning the replacement of connecting TSO with participating TSO were

made in Articles 8(1), 8(2), 9(1), 10(1) and 10(3) of the Proposal. The changes were needed to clarify that not all member TSOs will become participating TSOs and that not all connecting TSOs will be actively participating in the mFRR-Platform. This covers the case where an LFC area consists of more than one monitoring area, in which case only the appointed TSO will become a participating TSO.

(146) The Agency aligned the definition of 'economic surplus' with the definition of the term in the Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management ('CACM Regulation'), and deleted the bidding zone border definition, because the term is already implicitly defined in the CACM Regulation with the definition of bidding zones and because introducing a new definition in the aFRRIF would risk legal inconsistency.

6.2.16. Assessment of the requirements for consultation, transparency and stakeholder involvement

6.2.16.1. Consultation and involvement of stakeholders

(147) When drafting the Proposal, all TSOs aimed at addressing the requirements from Article 10 of the EB Regulation regarding the involvement of stakeholders.

(148) As indicated in paragraph (5) above, all TSOs fulfilled the requirements of Article 10 of the EB Regulation, since stakeholders were consulted on the draft Proposal pursuant to Article 10(1) of the EB Regulation. This involvement took place during a public consultation, which ran from 26 April 2018 until 29 June 2018. In addition, all regulatory authorities were regularly informed and consulted pursuant to Article 10(1) of the EB Regulation. The justifications regarding the consideration given to the views expressed by stakeholders during the public consultation in the drafting of the Proposal were provided in a separate document dated 18 December 2018 and submitted to all regulatory authorities.

6.2.16.2. Reporting and transparency

(149) The Agency added some reporting and monitoring obligations for TSOs in Article 13 of the Proposal to enhance the transparency which was asked for by stakeholders for certain design features of the aFRR-Platform. The additions for reporting on deviations between the activation of bids by each TSO and the selection of bids by the activation optimisation function are described in section 6.2.14.

(150) In addition, the Agency added reporting on the available cross-zonal capacity for the aFRR exchange on the platform.

(151) The Agency clarified that the yearly report shall be published and that if any inefficiencies are identified in the reports the TSOs should include a recommendation on how to deal with the identified problems. Such a recommendation should lead where relevant to an amendment of the current Proposal.

7. CONCLUSION

(152) For all the above reasons, the Agency considers the Proposal in line with the requirements of the EB Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I.

(153) Therefore the Agency approves the Proposal subject to the necessary amendments and to the necessary editorial amendments. To provide clarity, Annex I to this Decision sets out the Proposal as amended and approved by the Agency,

HAS ADOPTED THIS DECISION:

Article 1

The implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation in accordance with Article 21 of Regulation (EU) 2017/2195 is adopted as set out in Annex I to this Decision.

Article 2

This Decision is addressed to all TSOs:

50Hertz Transmission GmbH,
Amprion GmbH,
AS Augstsprieguma tĪkls,
Austrian Power Grid AG,
BritNed Development Limited (NL),
BritNed Development Limited (UK),
C.N.T.E.E. Transelectrica S.A.,
ČEPS a.s.,
Creos Luxembourg S.A.,
EirGrid Interconnector DAC,
EirGrid plc,
Elektroenergien Sistemen Operator EAD,
Elering AS,
ELES, d.o.o.,
Elia System Operator SA,
Elia System Operator NV/SA,
Energinet Electricity System Operator,
Fingrid Oyj,
HOPS d.o.o.,
Hrvatski operator prijenosnog sustava,
Independent Power Transmission Operator S.A.,
Kraftnät Åland Ab,
Litgrid AB,
MAVIR ZRt,
Moyle Interconnector Limited,

National Grid Electricity Interconnector Limited,
National Grid Electricity System Operator,
Nemo Link Limited,
Polskie Sieci Elektroenergetyczne,
Red Eléctrica de España S.A.,
Rede Eléctrica Nacional, S.A.,
Réseau de Transport d'Electricité,
Slovenská elektrizačná prenosová sústava, a.s.,
Statnett,
Svenska kraftnät,
System Operator for Northern Ireland Ltd,
TenneT TSO B.V.,
TenneT TSO GmbH,
Terna Rete Elettrica Nazionale S.p.A.,
TransnetBW GmbH and
VÜEN-Vorarlberger Übertragungsnetz GmbH.

Done at Ljubljana, on 24 January 2020.

- SIGNED -

For the Agency
The Director

C. Zinglersen

Annexes:

Annex I – Implementation framework for the European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation in accordance with Article 21 of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing

Annex Ia (for information only) – Implementation framework for the European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation in accordance with Article 21 of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing – with track changes

Annex II (for information only) – Evaluation of responses to the public consultation on the Implementation framework for the European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation

In accordance with Article 28 of Regulation (EU) 2019/942, the addressees may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.